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 NORTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

Scott T. Huchton

Plaintiff,

v.

Evergreen Professional Recoveries

Defendant.

Case Number

CV 10 5055

Complaint For Damages

Jury Trial Demanded

INTRODUCTION

1. Scott T. Huchton, (Plaintiff), through Plaintiff's attorneys, brings this action to challenge the actions of Evergreen Professional Recoveries, ("Defendant"), with regard to attempts by Defendant to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.
2. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which Plaintiff alleges on personal knowledge.

HYDE & SWIGART
 Riverside, California

ORIGINAL

1 3. While many violations are described below with specificity, this Complaint
2 alleges violations of the statutes cited in their entirety.

3 4. Unless otherwise stated, all the conduct engaged in by Defendant took place
4 in California.

5 5. Any violations by Defendant were knowing, willful, and intentional, and
6 Defendant did not maintain procedures reasonably adapted to avoid any such
7 violation.

8 JURISDICTION AND VENUE

9 6. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
10 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

11 7. This action arises out of Defendant's violations of the Fair Debt Collection
12 Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair
13 Debt Collection Practices Act, California Civil Code §§ 1788-1788.32
14 ("Rosenthal Act").

15 8. Because Defendant does business within the State of California, personal
16 jurisdiction is established.

17 9. Venue is proper pursuant to 28 U.S.C. § 1391.

18 10. At all times relevant, Defendant conducted business within the State of
19 California.

21 PARTIES

22 11. Plaintiff is a natural person who resides in the City of Monterey, State of
23 California and is a member of the United States Navy.

24 12. Defendant is located in the City of Bothell, in the State of Washington.

25 13. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer"
26 as that term is defined by 15 U.S.C. § 1692a(3).

27 14. Defendant is a person who uses an instrumentality of interstate commerce or
28 the mails in a business the principal purpose of which is the collection of

1 debts, or who regularly collects or attempts to collect, directly or indirectly,
2 debts owed or due or asserted to be owed or due another and is therefore a
3 debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

4 15. Plaintiff is a natural person from whom a debt collector sought to collect a
5 consumer debt which was due and owing or alleged to be due and owing from
6 Plaintiff, and is a "debtor" as that term is defined by California Civil Code §
7 1788.2(h).

8 16. Defendant, in the ordinary course of business, regularly, on behalf of himself,
9 herself, or others, engages in debt collection as that term is defined by
10 California Civil Code § 1788.2(b), is therefore a debt collector as that term is
11 defined by California Civil Code § 1788.2(c).

12 17. This case involves money, property or their equivalent, due or owing or
13 alleged to be due or owing from a natural person by reason of a consumer
14 credit transaction. As such, this action arises out of a consumer debt and
15 "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

16 FACTUAL ALLEGATIONS

17 18. Sometime before June 24, 2009, Plaintiff is alleged to have incurred certain
18 financial obligations.

19 19. These financial obligations were primarily for personal, family or household
20 purposes and are therefore a "debt" as that term is defined by 15 U.S.C.
21 §1692a(5).

22 20. These alleged obligations were money, property, or their equivalent, which is
23 due or owing, or alleged to be due or owing, from a natural person to another
24 person and are therefore a "debt" as that term is defined by California Civil
25 Code §1788.2(d), and a "consumer debt" as that term is defined by California
26 Civil Code §1788.2(f).

- 1 21. Sometime thereafter, but before June 24, 2009, Plaintiff allegedly fell behind
2 in the payments allegedly owed on the alleged debt. Plaintiff currently takes
3 no position as to the validity of this alleged debt.
- 4 22. Subsequently, but before June 24, 2009, the alleged debt was assigned,
5 placed, or otherwise transferred, to Defendant for collection.
- 6 23. On or about June 24, 2009, Plaintiff received a telephone call from
7 Defendant. This telephone call was a "communication" as 15 U.S.C.
8 §1692a(2) defines that term, and a "debt collection" as that phrase is defined
9 by Cal. Civ. Code § 1788.2(b).
- 10 24. During this telephone call, Defendant stated that Defendant was a debt
11 collector and that Defendant was attempting to collect a debt, specifically,
12 money owed on the rental of a house by Plaintiff.
- 13 25. On or about July 6, 2009, Defendant mailed a dunning letter to Plaintiff. A
14 few days later, Plaintiff received that letter.
- 15 26. This communication to Plaintiff was a "communication" as that term is
16 defined by 15 U.S.C. § 1692a(2), and an "initial communication" consistent
17 with 15 U.S.C. § 1692g(a).
- 18 27. This communication was a "debt collection" as Cal. Civ. Code 1788.2(b)
19 defines that phrase, and an "initial communication" consistent with Cal. Civ.
20 Code § 1812.700(b).
- 21 28. Subsequently, but within the thirty-day period described in 15 U.S.C. §
22 1692(a), Plaintiff notified Defendant in writing, that this alleged debt, or some
23 portion of it, was disputed.
- 24 29. After receiving this dispute from Plaintiff, Defendant reported the debt as
25 being past due to the three major credit reporting bureaus, Equifax,
26 TransUnion, and Experian.
- 27
28

- 1 30. When Defendant reported this debt to these three credit reporting bureaus,
2 Defendant did not advise the bureaus that the debt was in dispute, and,
3 consequently, Plaintiff's credit report was damaged.
- 4 31. Through this conduct, Defendant communicated or threatened to
5 communicate to a person credit information which was known or which
6 should have been known to be false, including the failure to communicate that
7 a disputed debt is disputed. Consequently, Defendant violated 15 U.S.C. §
8 1692e(8), as well as California's Rosenthal Act as Cal. Civ. Code § 1788.17
9 incorporates the FDCPA.
- 10 32. At no point has Defendant ever provided any verification of the alleged debt.
- 11 33. On or about May 13, 2010, Plaintiff received a letter from Defendant
12 addressed to his California address. This letter was a "communication" as 15
13 U.S.C. §1692a(2) defines that term, and a "debt collection" as that phrase is
14 defined by Cal. Civ. Code § 1788.2(b).
- 15 34. In this letter Defendant demanded payment of the alleged debt.
- 16 35. By continuing to attempt to collect the debt without providing verification as
17 required by 15 U.S.C. § 1692g(b) and Cal. Civ. Code § 1788.17 as it
18 incorporates 15 U.S.C. § 1692g(b), Defendant violated both the FDCPA and
19 California's Rosenthal Act.
- 20 36. Defendant, a third party debt collector, failed, in the first written notice
21 initially addressed to Plaintiff's California address in connection with
22 collecting the alleged debt by Defendant, pursuant to Cal. Civ. Code §
23 1812.700, and in the manner prescribed by Cal. Civ. Code § 1812.700(b) and
24 Cal. Civ. Code § 1812.701(b), to provide a notice to Plaintiff as prescribed in
25 Cal. Civ. Code § 1812.700(a). Consequently, pursuant to Cal. Civ. Code §
26 1812.702, this omission by Defendant violated the Rosenthal Act.
- 27 37. Subsequently, Plaintiff telephoned Defendant and during that conversation
28 Defendant, through its agent Lisa, advised Plaintiff that if Plaintiff did not pay

1 the alleged debt Defendant would insure that Plaintiff would not be able to
2 ever rent property again in the United States until the alleged debt was paid.

3 38. Through this conduct, Defendant threatened to take action that cannot legally
4 be taken or that is not intended to be taken. Consequently, Defendant violated
5 15 U.S.C. § 1692e(5), as well as California's Rosenthal Act as Cal. Civ. Code
6 § 1788.17 incorporates the FDCPA.

7 39. Through this conduct, Defendant used a false, deceptive, or misleading
8 representation or means in connection with the collection of a debt.
9 Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. §
10 1692e(10).

11 40. On numerous occasions thereafter, including on or about May 14, 2010, May
12 17, 2010, May 21, 2010, May 26, 2010, June 3, 2010, June 10, 2010, June 15,
13 2010, June 22, 2010, and June 25, 2010, Plaintiff received telephone calls
14 from Defendant. This telephone calls were all "communications" as 15
15 U.S.C. §1692a(2) defines that term, and "debt collections" as that phrase is
16 defined by Cal. Civ. Code § 1788.2(b).

17 41. By continuing to attempt to collect the alleged debt without providing
18 verification as required by 15 U.S.C. § 1692g(b) and Cal. Civ. Code §
19 1788.17 as it incorporates 15 U.S.C. § 1692g(b), Defendant repeatedly
20 violated both the FDCPA and California's Rosenthal Act.

21 42. On numerous occasions thereafter, Defendant telephoned Plaintiff's parents
22 and disclosed details of the alleged debt in their abusive attempt to collect.

23 43. Except as provided in 15 U.S.C. § 1692b, and without the prior consent of the
24 consumer given directly to the Defendant, and without the express permission
25 of a court of competent jurisdiction, and for a purpose not reasonably
26 necessary to effectuate a postjudgment judicial remedy, Defendant
27 communicated, in connection with the collection of a debt, with a person
28 other than the consumer, his attorney, a consumer reporting agency, the

1 creditor, the attorney of the creditor, or the attorney of Defendant.
 2 Consequently, Defendant violated 15 U.S.C. § 1692c(b), as well as
 3 California's Rosenthal Act as Cal. Civ. Code § 1788.17 incorporates the
 4 FDCPA.

5 CAUSES OF ACTION

6 COUNT I

7 FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

8 15 U.S.C. §§ 1692 ET SEQ.

- 9 44. Plaintiff repeats, re-alleges, and incorporates by reference, all other
 10 paragraphs.
- 11 45. The foregoing acts and omissions constitute numerous and multiple violations
 12 of the FDCPA, including but not limited to each and every one of the above-
 13 cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
- 14 46. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
 15 any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in
 16 an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,
 17 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from
 18 Defendant.

19 COUNT II

20 ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)

21 CAL. CIV. CODE §§ 1788-1788.32

- 22 47. Plaintiff repeats, re-alleges, and incorporates by reference, all other
 23 paragraphs.
- 24 48. The foregoing acts and omissions constitute numerous and multiple violations
 25 of the Rosenthal Act, including but not limited to each and every one of the
 26 above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32
- 27 49. As a result of each and every violation of the Rosenthal Act, Plaintiff is
 28 entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a);

1 statutory damages for a knowing or willful violation in the amount up to
2 \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's
3 fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and
6 Plaintiff be awarded damages from Defendant, as follows:


- 7 • An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §
8 1692k(a)(2)(A);
- 9 • An award of costs of litigation and reasonable attorney's fees, pursuant
10 to 15 U.S.C. § 1692k(a)(3);
- 11 • An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code
12 § 1788.30(b);
- 13 • An award of costs of litigation and reasonable attorney's fees, pursuant
14 to Cal. Civ. Code § 1788.30(c).

15 50. Pursuant to the seventh amendment to the Constitution of the United States of
16 America, Plaintiff is entitled to, and demands, a trial by jury.

17
18 Respectfully submitted,

Hyde & Swigart

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21 Date: September 28, 2010

22 By: 
23 Robert L. Hyde
24 Attorneys for Plaintiff
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